

**Conservation Districts
and the
Kansas Open Records Act (KORA)
K.S.A. 45-215 et seq.**

KORA and FOIA

Conservation districts, being a political subdivision of the state, must comply with the provisions of the KORA. Therefore, all conservation district records are open for inspection (except those closed by law) during normal office hours. Federal government agencies, i.e., the Natural Resources Conservation Service and the Farm Service Agency are subject to the Freedom of Information Act (FOIA). **Conservation district employees should be familiar with both Acts and be aware of the different laws pertaining to the release of conservation district records and federal agency records.**

The following information contains excerpts from a document prepared by Phill Kline, Attorney General, and Theresa Marcel Nuckolls, Assistant Attorney General. The entire document is located at: www.accesskansas.org/ksag/contents/meeting/kora.htm. Additional information has been added by the State Conservation Commission as it relates to Kansas conservation districts.

The KORA

- Applies to public records defined as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency..."
- Does not require that a record be created in order to respond to requests or in order to answer questions asking for "information."
- Unless closed pursuant to specific legal authority, all records are open for inspection.
- A list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the person listed.
 - Any person (including the records custodian) who violates this law and gives, or receives records for such purpose shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney in a sum set by the court not to exceed \$500 for each violation.
 - The records custodian may not deny a requester access to records, which are otherwise open, when the appropriate certification is submitted and the records custodian is acting in good faith.
- Any person may make abstracts or obtain copies of a public record.
- Members of the public cannot remove a record without written permission of the custodian (freedom of information officer).
- If a public record contains material not subject to disclosure, that portion of the record must be deleted and the record made available, i.e., Social Security Numbers.
- If a record is reviewed and discussed during an open meeting, a record that may ordinarily be discretionarily closed, generally becomes open.

Conservation Districts:

- Must appoint a local freedom of information officer to:
 1. prepare and provide educational materials and information concerning KORA;
 2. be available to assist the public agency and members of the general public to resolve disputes relating to KORA;
 3. respond to inquiries relating to the KORA;
 4. establish the requirements for the content, size, shape and other physical characteristics of a brochure required to be displayed or distributed or otherwise make available to the public under the KORA.
- Must appoint an official custodian of the agency's records and any other custodian who is ordinarily available to act on requests made and to ensure the agency complies with the KORA.
- May combine the local freedom of information officer and the official custodian duties and assign to one person, or have different people assigned to each position.
- Must adopt procedures to be followed and use the same procedure for all requests.
- Must provide, upon request, office hours, name of custodian of records, fees, and procedures for obtaining records.
- Must produce requested records within three business days. (When allowable exceptions exist, provide a written response to requester within three business days.)
- May prescribe reasonable fees for copies not exceeding the actual cost, including the cost of staff time. This also could include postage and/or faxing charges.
 - **NOTE: 25 cents per page (or less) has been deemed reasonable. (District could set policy stating that a maximum number of copies are free and charge for additional copies.)**
 - **NOTE: You can not charge for USDA materials or the use of USDA owned equipment, i.e., copier. When using the USDA copier and copies exceed 100, contact the NRCS State Administrative Officer for instructions on collecting NRCS copying fees.**
 - **NOTE: Money collected for district copying fees shall be deposited in the Operations Fund.**
- May require the request to be written, but not on a specific form.
- May require written certification that the requester will not use names and addresses obtained from the records to solicit sales to those persons whose names are contained in the list. **The SCC strongly recommends this because if requester makes this certification the records custodian is relieved of liability if the requester illegally uses the names and addresses.**

Some public records are mandatorily closed by federal law, state statute, or Supreme Court Rule Records and an example applicable to conservation districts would be:

- Social Security Numbers.

Records that may be closed at the discretion of the conservation district include:

- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment.
 - **NOTE: Names, positions, contracts, salaries and lengths of service must be public.**
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual.
- Criminal investigation records.
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy, i.e. Social Security Numbers.
- Correspondence between a public agency and a private individual, other than correspondence intended to give notice of an agency action, policy or determination.
- Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session.
- Notes, preliminary drafts, memoranda or other records in which opinions are expressed or policies or actions are proposed. This exception does not apply when such records are cited or identified in a public meeting.
- Sealed bids and related documents, until a bid is accepted or all bids rejected.
- Public records containing information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy, such as home addresses of public employees.
- Information which would reveal the precise location of an archeological site.

State Cost-Share Contracts and Related Information:

- Considered open records, except there is the prohibited use of obtaining names and addresses for the purpose of selling or offering for sale any property (i.e. grass seed or trees) or service (i.e. drilling or dirt work) to the persons listed. See information provided above concerning using names and addresses from public records and requiring a written certification from the requester.
- If a person (i.e. dirt contractor) requests information concerning an approved contract because he/she has been hired by the landowner to perform the work or is preparing an estimate for the work per landowner's request, then the intent is not accessing the list of names and addresses for the purpose of selling or offering services (because he/she already has that information), but using the public record for another purpose.
- When contracts are released, the Social Security Number must not be visible on released copy.